

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

)
AVOCADO CREST CONDOMINIUMS, LLC, a)
California Limited Liability Company;)
RALPH J. GIANNELLA, an individual;)
CONSTRUCTION MEDIATION ONLY INC.,)
a California Corporation;)
WILLIAM G. AYYAD, an individual;)
and WILLIAM G. AYYAD, INC., a)
California Corporation,)
)
Plaintiffs,)
)
vs.) Case No:GIC857918
)
ALLIED MUTUAL INSURANCE COMPANY, an)
Iowa Corporation; SEQUOIA INSURANCE)
COMPANY, a California Corporation;)
AMCO INSURANCE COMPANY, an Iowa)
Corporation; MICHAEL EHRENFELD)
COMPANY - INSURANCE AGENTS AND)
BROKERS, a California)
Corporation (DOE 1); KETTERING.ROSE)
INSURANCE AGENTS & BROKERS,)
dba KETTERING ROSE INSURANCE AGENTS)
AND BROKERS, a California)
Corporation (DOE 2); ROBYN KETTERING,)
an individual (DOE 3);)
and DOES 4 through 100, inclusive,)
)
Defendants.)
)

VIDEOTAPED DEPOSITION OF DAVID EVERETT

Volume 2 - Pages 245 through 394

San Diego, California

May 30, 2007

REPORTED BY CLAIRE A. WANNER, CSR NO. 12965

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2 IN AND FOR THE COUNTY OF SAN DIEGO
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16 AND BROKERS, a California)
Corporation (DOE 2); ROBYN KETTERING,)
17 an individual (DOE 3);)
and DOES 4 through 100, inclusive,)
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Defendants.)

19)
20

21 VIDEOTAPED DEPOSITION OF DAVID EVERETT,
22 commencing at the hour of 9:30 a.m. on Wednesday,
23 May 30, 2007, at 530 B Street, Suite 350, San Diego,
24 California, before Claire A. Wanner, Certified
25 Shorthand Reporter in and for the State of California.

1 APPEARANCES:

2

3 For the Plaintiff:

4 Rockwood & Noziska, LLP

BY: NEAL H. ROCKWOOD, ESQ.

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San Diego, California 92106

6 (619) 224-7778

7 -- and --

8 Rockwood & Noziska, LLP

BY: C. BRANT NOZISKA, ESQ.

9 5060 North Harbor Drive, Suite 255

San Diego, California 92106

10 (619) 224-7778

11

12 For the Defendant:

13 Miller Johnson Law

BY: JON B. MILLER, ESQ.

14 The Marston Building

427 C Street, Suite 410

15 San Diego, California 92101

(619) 232-0086

16

17

18 Also present: Javen Heard, Videographer

19

20

21

22

23

24

25

1 well. You actually have a written set of guidelines
2 for these policies; is that correct?

3 A That's correct.

4 MR. ROCKWOOD: And I think we've asked for
5 those before -- Jon, can you make a note of that? And
6 I'd be happy to give you a protective order on that if
7 you need one.

8 BY MR. ROCKWOOD:

9 Q In those guidelines did they differentiate --
10 tell me what are the guidelines for, first of all.

11 A The guidelines are to -- to aid the
12 underwriters in making risk assessment and
13 determinations as well as helping us to avoid
14 potentially undesirable situations.

15 Q And is there discussion in the guidelines
16 specifically with respect to construction defects?

17 A Yes, there is.

18 Q What in general are the guidelines on that?

19 A That we would prefer to avoid construction
20 defect claims.

21 Q Okay. And are there guidelines relative to
22 mold issues?

23 A I don't -- I don't recall.

24 Q Did you ever have discussions with Robyn
25 Kettering when she was asking you to -- to write

1 this 1164 policy about the guidelines that you had
2 in-house?

3 A I think we had some discussion on guidelines,
4 but I believe it was related more to, well, this --
5 this location is going to have to go on a CPAA because
6 of the age, that -- that type of discussion.

7 Q Okay.

8 A Again, it was my understanding from Mrs. --
9 Ms. Kettering's original presentation of the account
10 that the risk was a -- a -- he would buy, repair, and
11 hold properties and --

12 Q You know --

13 A And -- may I finish my statement?

14 Q Yes.

15 A And that while the insured used to be involved
16 in developing or -- or flipping properties, he had
17 discontinued those operations and was now buying and
18 holding.

19 Q I know you spoke about this in your last
20 deposition as well.

21 Do you know if that presentation was in
22 writing anywhere? Did she have just a verbal
23 discussion with you about that, or did she put it in
24 writing?

25 A I believe it was on the first page of the

1 application that was submitted to me.

2 Q Okay. You mean the application that was never
3 signed or is it the application --

4 A The original application for the policy that
5 became 1164.

6 Q Okay. We can go back to that. That's in one
7 of the other binders back there.

8 Let's jump back now to this loss control
9 report that you got in May and your concerns. After
10 you reviewed that report, what did you do next in terms
11 of communicating with Robyn Kettering?

12 A I requested Ms. -- I -- I just -- you know, I
13 advised Ms. Kettering about the loss control concerns.
14 I requested her to move coverage to -- you know, to
15 send it, you know, because I was outside of my 60-day
16 window --

17 Q Right.

18 A -- when I have justification to --

19 Q Resend the policy?

20 A I can -- well, I can either -- I -- I could
21 have sent 30 days' notification of, you know, fails to
22 meet underwriting criteria, you have 30 days to replace
23 the coverage. I was with -- I was outside of that
24 60-day window. And at that point my options for --
25 for -- really, the only reason I can get rid of a

1 policy at that point is for -- is for, you know,
2 misrepresentation. And, you know, when I'm looking at
3 it, I'm looking back at the material, it's like my
4 interpretation was I was had, was it misrepresent- --
5 but was it misrepresented in a -- in a -- was it
6 misrepresented in a way that if I'm deposed in this
7 situation --

8 Q Right.

9 A -- would I -- you know, what would I say?

10 Q Right.

11 A And I did not feel comfortable based on the
12 facts at hand, so I requested Ms. Kettering to replace
13 coverage.

14 Q Okay. I'll show you a two-page document
15 because now we're going to jump back in time. We'll
16 come back to that May time frame. It's not overly
17 superly relevant to me right now, but these are.

18 I'll show you a two-page document addressed to
19 yourself from Michael Ehrenfeld Company, Robyn
20 Kettering, dated October 4, '01, Bates-stamped KET 0022
21 and '23.

22 If you could take a look at that and we'll
23 mark that next as Exhibit 162.

24 (Exhibit 162 was marked.)

25

1 BY MR. ROCKWOOD:

2 Q All right. Did you receive this document? Do
3 you recall?

4 A I did.

5 Q And I know we didn't get it out of the file
6 that was produced. We got it from Kettering. I
7 didn't -- hadn't seen it in here. So that's the only
8 reason I asked that question.

9 The second paragraph down it says, "The
10 properties have all been updated either prior to the
11 insured purchasing them or after the insured closed
12 escrow on them. The date of updating is listed on the
13 underwriting report."

14 What is being referenced there as the
15 underwriting report?

16 A I am not sure. However, if we go back to
17 Exhibit 152 --

18 Q That had all the information on the properties
19 on it?

20 A Yes.

21 Q Do you think that's what's being referenced
22 here?

23 A That -- again, I'm going back five years, so
24 I'm not completely positive, but --

25 Q There isn't anything in your file that's

EXHIBIT B

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COUNTY OF SAN DIEGO
CENTRAL DIVISION

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ONLY, INC., a California)
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(Doe 1); KETTERING ROSE INSURANCE)
AGENTS & BROKERS, d/b/a KETTERING)
ROSE INSURANCE AGENTS AND BROKERS,)
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ROBYN KETTERING, an individual)
(Doe 3); and DOES 4 through 100,)
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(SEE NEXT PAGE FOR COMPLETE CAPTION)

Deposition of CARL PANICO

Taken on Thursday, November 29, 2007

Reported by: KATHLEEN SIRI, CSR No. 9726

1 A That would be with the claims
2 professional.

3 MR. MILLER: Calls for speculation.

4 BY MR. NOZISKA:

5 Q With who?

6 A I would say that would be with the claims
7 professional.

8 Q Dave Easton?

9 A If he was handling the file at the time
10 that decision was made, yes.

11 Q All right.

12 But you would expect that there would have
13 been a notification to the insured of a finding of a
14 lack of coverage under the GLAO policy; true?

15 A If a claim is submitted under the GLAO
16 policy.

17 Q It was never submitted under the GLAO
18 policy?

19 A Okay. Then if we learned of another
20 policy that might afford coverage for the claim that
21 was presented to us at that point in time, we should
22 acknowledge the policy and the applicability of the
23 coverage.

24 Q Okay. And do you believe that the company
25 has acknowledged coverage under the BPH portion under

1 the 1164 policy through its payment of the indemnity?

2 A Yes.

3 Q And do you know of any dispute as regards
4 to the obligation of the company to afford coverage
5 under the BPH policy under the 1164 number at this
6 time?

7 A No.

8 Q Do you know one way or the other whether
9 there's any dispute as to whether coverage is owed
10 under the GLAO policy?

11 A Do you know of coverage of any kind as
12 being disputed under the GLAO policy?

13 Q Right.

14 A No.

15 Q Okay. Do you know whether coverage has
16 been afforded under the GLAO policy?

17 A I believe we already talked about
18 defending under that policy, but I can't tell you if
19 there's been an acknowledgment of indemnity owed under
20 that policy. I don't recall.

21 Q Do you think if there was a coverage
22 determination under the GLAO policy, it might be in
23 this new claims file that's being set up or should it
24 have been made under the claims file that was set up
25 for the GLAO policy?

1 A Again, speculating on what documentation
2 would take place, I would think something that takes
3 place in the handling of the GLAO policy should be
4 documented within the claim file set up for the GLAO
5 policy.

6 Q Okay. So if a finding was made that the
7 GLAO policy does not apply to this claim for whatever
8 reason, then that finding should be documented in the
9 GLAO claims file?

10 A Yes.

11 Q I take it then, if it was not, then that
12 would be another mistake on the part of the company?

13 A You know, if something is omitted without
14 cause, I guess you could call it a mistake, certainly.

15 Q Now, when this claim was initially
16 tendered under the 3037 policy, there were two claims
17 opened up, one under the first party coverage under the
18 policy, first party property coverage, and then a
19 second claim under the liability portion of the policy.

20 And the first party claim essentially
21 looks like it was abandoned. The claim was just
22 tendered to the company under the 3037 policy
23 generally, not under the first party or third party,
24 but just under the policy number.

25 Do you think that the company should have